

STATE OF TENNESSEE

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Opinion No. 03-098

Brian A. Settlement Agreement Level 1 Waiver Provisions

QUESTION

Are any waiver provisions relative to Level 1 foster care contained in the settlement agreement of *Brian A. v. Sundquist*, U.S.D.C. M.D. Tenn. No. 3:00-0445?

OPINION

No, but the settlement agreement does contain exceptions to certain of its provisions that could be considered to be “waivers,” and that apply equally to children at every level of foster care service.

ANALYSIS

The term “Level 1” is used by the Department of Children’s Services (DCS) to describe the lowest intensity level of services provided to children in care. *See, e.g., DCS, Provider Policy Manual* ch. X.¹ The settlement agreement of *Brian A. v. Sundquist*, U.S.D.C. M.D. Tenn. No. 3:00-0445 (*Brian A.*), approved by the Court on July 27, 2001, does not contain the term “Level 1” in any of its provisions, and does not use the term “waiver” in any sense that would appear relevant to your question.

While the settlement agreement contains no waivers specific to Level 1 foster care, the settlement agreement does contain a number of provisions that set out standards pertaining to all foster children at every level of service, and some of those provisions permit exceptions that could be regarded as “waivers.” For example, “all children” are required to “be placed within their own region or within a 75 mile radius of [their] home” unless a DCS official certifies in writing that exceptional circumstances exist that justify placement elsewhere. Settlement Agreement § VI.C.1. Similarly, “no child” may be placed in a foster home if that placement results in more than six total children in the home, more than three foster children in the home, or more than three children less

¹Currently available online at: http://www.state.tn.us/youth/pdf/files/provider_manual01.pdf

than age three in the home unless a DCS official certifies in writing that exceptional circumstances exist that justify such a placement or the placement involves a large sibling group. Settlement Agreement § VI.C.7. Again, “no child” may placed in a congregate care facility with a capacity exceeding eight children unless a DCS official certifies in writing that exceptional circumstances exist that justify placement in such a facility. Settlement Agreement § VI.C.9. As noted above, these provisions apply as much to Level 1 service children as to all other children.

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